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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,770	03/25/2004	Robert V. Neault	1185	5889

7590 11/19/2004
Donald J. Ersler
725 Garvens Avenue
Brookfield, WI 53005

EXAMINER

ARK, DARREN W

ART UNIT PAPER NUMBER

3643

DATE MAILED: 11/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/808,770

Applicant(s)

NEAULT ET AL.

Examiner

Darren W. Ark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,8 and 21-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,8 and 21-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Species I - Figs. 1-6; Species II - Figs. 1a, 3a; and Species III - Figs. 7-9.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-3, 6-11, and 14-20 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the

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case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Donald J. Ersler on Tuesday, August 24, 2004 a provisional election was made without traverse to prosecute the invention of Species II, claims 1, 2, 4, 5, 8, and 21-34. Affirmation of this election must be made by applicant in replying to this Office action. No Claims are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 4, 8, 21, 23-25, 27 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Baker 4,400,904.

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Baker discloses providing a poison dispenser (38, 40, 42) with a poison retention area (40, 42) and at least one tubular passage (12, 14, 16) leading to the poison retention area; extending a scent tube (20) from the dispenser, the scent tube having at least one scent opening (26); filling the poison retention area with poison (30); and securing the poison dispenser to a surface (via 54).

In regard to claims 4, 5, and 25, see Fig. 7.

In regard to claim 23, Baker discloses applying scent adjacent the at least one scent opening (occurs as soon as poison bait is placed in Baker device).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 22, 28, 29-32, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker 4,400,904 in view of Hedrich et al. 1,302,160.

Baker does not disclose securing the dispenser with two retention devices, each of which being disposed at an obtuse angle relative to a bottom of the at least one tubular passage. Hedrich et al. discloses two retention devices (16, 17; also 16a, 17a, 16). It would have been obvious to a person of ordinary skill in the art to modify the retention device of Baker such that it has two retention devices in view of Hedrich et al. in order to provide means for anchoring the bait station to the surface that will also

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prevent shifting of the bait station relative to the anchor point and will engage the bait station on opposing surfaces to provide the necessary hold onto the bait station.

Baker and Hedrich et al. do not disclose each retention device being disposed at an obtuse angle relative to the bottom of the at least one tubular passage. It would have been an obvious matter of design choice to position each of the retention devices such that they are disposed at an obtuse angle relative to the bottom of the at least one tubular passage since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design and it appears that the device of Baker and Hedrich et al. would perform equally as well with each of the retention devices being positioned at an obtuse angle relative to the bottom of the at least one tubular passage, and because by positioning each of the retention devices as such would prevent lateral movement of the poison dispenser in a direction going against the retainer positioned at the obtuse angle relative to the bottom of the at least one passage.

8. Claims 1, 2, 4, 5, 8, 21, 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker 4,400,904 in view of French 4,462,182.

Alternatively, Baker does not disclose extending a scent tube from the dispenser, and wherein the scent tube has at least one scent opening formed therethrough. French discloses extending a scent tube (20) from the inside of a cover (14) to an area where it is desired to attract rodents, the scent tube having at least one scent opening (20a) formed therethrough for allowing the scent of the bait to freely enter the cover and the passageways (12) and also applying scent (grain, cheese particles, fish, or meat

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scraps) adjacent the at least one opening. It would have been obvious to a person of ordinary skill in the art to modify the poison dispenser of Baker by extending a scent tube from the dispenser in view of French in order to provide a means for dispersing the scent of the bait so as to attract rodents by appealing to their sense of smell.

In regard to claims 4, 5, 25, and 26, see Fig. 7.

9. Claims 22, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker 4,400,904 in view of French 4,462,182 as applied to claims 1, 23 above, and further in view of Hedrich et al. 1,302,160.

Baker does not disclose securing the dispenser with two retention devices, each of which being disposed at an obtuse angle relative to a bottom of the at least one tubular passage. Hedrich et al. discloses two retention devices (16, 17; also 16a, 17a, 16). It would have been obvious to a person of ordinary skill in the art to modify the retention device of Baker such that it has two retention devices in view of Hedrich et al. in order to provide means for anchoring the bait station to the surface that will also prevent shifting of the bait station relative to the anchor point and will engage the bait station on opposing surfaces to provide the necessary hold onto the bait station.

Baker and Hedrich et al. do not disclose each retention device being disposed at an obtuse angle relative to the bottom of the at least one tubular passage. It would have been an obvious matter of design choice to position each of the retention devices such that they are disposed at an obtuse angle relative to the bottom of the at least one tubular passage since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design and it appears that the device of Baker

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and Hedrich et al. would perform equally as well with each of the retention devices being positioned at an obtuse angle relative to the bottom of the at least one tubular passage, and because by positioning each of the retention devices as such would prevent lateral movement of the poison dispenser in a direction going against the retainer positioned at the obtuse angle relative to the bottom of the at least one passage.

10. Claims 29-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker 4,400,904 in view of French 4,462,182 and Hedrich et al. 1,302,160.

Alternatively, Baker does not disclose extending a scent tube from the dispenser, and wherein the scent tube has at least one scent opening formed therethrough.

French discloses extending a scent tube (20) from the inside of a cover (14) to an area where it is desired to attract rodents, the scent tube having at least one scent opening (20a) formed therethrough for allowing the scent of the bait to freely enter the cover and the passageways (12) and also applying scent (grain, cheese particles, fish, or meat scraps) adjacent the at least one opening. It would have been obvious to a person of ordinary skill in the art to modify the poison dispenser of Baker by extending a scent tube from the dispenser in view of French in order to provide a means for dispersing the scent of the bait so as to attract rodents by appealing to their sense of smell.

Baker also does not disclose securing the dispenser with two retention devices, each of which being disposed at an obtuse angle relative to a bottom of the at least one tubular passage. Hedrich et al. discloses two retention devices (16, 17; also 16a, 17a, 16). It would have been obvious to a person of ordinary skill in the art to modify the

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retention device of Baker such that it has two retention devices in view of Hedrich et al. in order to provide means for anchoring the bait station to the surface that will also prevent shifting of the bait station relative to the anchor point and will engage the bait station on opposing surfaces to provide the necessary hold onto the bait station.

Baker and Hedrich et al. do not disclose each retention device being disposed at an obtuse angle relative to the bottom of the at least one tubular passage. It would have been an obvious matter of design choice to position each of the retention devices such that they are disposed at an obtuse angle relative to the bottom of the at least one tubular passage since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design and it appears that the device of Baker and Hedrich et al. would perform equally as well with each of the retention devices being positioned at an obtuse angle relative to the bottom of the at least one tubular passage, and because by positioning each of the retention devices as such would prevent lateral movement of the poison dispenser in a direction going against the retainer positioned at the obtuse angle relative to the bottom of the at least one passage.

In regard to claims 32 and 33, see Fig. 7.

Response to Arguments

11. Applicant's arguments filed 10/25/04 have been fully considered but they are not persuasive.

In regard to applicant's argument that "Baker '904 does not teach...at least one scent opening formed through a scent tube...", the Examiner contends that the openings (26) are located in the scent tube (20) as recited in the claims. The claims at present do not particularly define the structure of the desired invention with regard to the poison dispenser and scent tube with at least one opening over the prior art of record applied in the rejections.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Maffo et al. 2003/0089025 discloses a rodent bait with an open structure comprising a plurality of elongated elements, and wherein during the manufacturing process a scent may be added to the open structure and that chocolate and peanut butter scents are of particular effectiveness for luring animals.

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the


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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark
Primary Examiner
Art Unit 3643

DWA